

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Request for Waiver by |) | |
| |) | |
| New Carlisle Olive Township Public Library |) | File No. SLD-332368 |
| New Carlisle, Indiana |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |
| |) | |
| Changes to the Board of Directors of the |) | CC Docket No. 97-21 |
| National Exchange Carrier Associations, Inc. |) | |

ORDER

Adopted: March 12, 2003

Released: March 13, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a request filed by New Carlisle Olive Township Public Library (New Carlisle Olive), seeking a waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ Specifically, New Carlisle Olive requests waiver of the filing deadline for Funding Year 2002 because of a delay in gathering data necessary for calculation of its discount rate.² For the reasons set forth below, we deny the New Carlisle Olive's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ Once the applicant has filed an FCC Form 470 and complied with the Commission's competitive

¹ Electronic mail from Stephen Boggs, New Carlisle Olive Township Public Library, to Federal Communications Commission, filed April 12, 2002 (Waiver Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Waiver Request. Previously, this funding period would be referred to as Funding Year 5. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2001 and ends on June 30, 2002, previously described as Funding Year 4, and is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003, previously described as Funding Year 5, and is now called Funding Year 2002, and so on.

³ 47 C.F.R. §§ 54.501–54.503.

bidding requirements and entered into an agreement for eligible services, it must submit a completed FCC Form 471 application to the Administrator.⁴ The Commission's rules require that the applicant file the FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁵ The last day of the filing window for Funding Year 2002 was January 17, 2002.⁶

3. New Carlisle Olive concedes that it filed its FCC Form 471 after the filing window had closed for Funding Year 2002.⁷ It attributes the delay in filing in part to a third party supplying information necessary for completing the FCC Form 471. New Carlisle Olive also attributes its delay to the difficulties of submitting the FCC Form 471 while the library was busy finalizing plans for building a new library.⁸ Finally, New Carlisle Olive asks why USAC waited until April 12, 2002, to notify it of the tardy filing. In light of the foregoing, New Carlisle Olive requests a waiver of the filing deadline.

4. A waiver can be granted only if it is supported by a showing of good cause.⁹ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.¹⁰ We have traditionally held applicants to a high standard for waivers, noting that ultimately it is the applicant who has responsibility for the timely submission of its application.

5. We conclude that none of New Carlisle Olive's claims rise to the level required for a waiver. First, we are not persuaded by New Carlisle Olive's claim that a delay in receiving third-party data relieves the library of responsibility for timely submission of the application.¹¹ At the time New Carlisle Olive filed its application, the FCC Form 471 instructions directed libraries to calculate their discounts by taking the weighted average discount of the school district within which the library is located.¹² The instructions directed libraries to contact the appropriate school district for data in order to determine the discount.¹³ New Carlisle Olive claims that it requested the data from the school district administration in December 2001. The

⁴ 47 C.F.R. § 54.504(c).

⁵ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁶ SLD website, What's New Archives (January 10, 2002)
<<http://www.sl.universalservice.org/whatsnew/012002.asp#011002b>>.

⁷ FCC Form 471, New Carlisle Olive, filed January 29, 2002.

⁸ Waiver Request.

⁹ See 47 C.F.R. § 1.3.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ See, e.g., *Request for Review by Homer Community Consolidate S.D 33C, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.70C.03-10-00.09700014, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 9353 (Com. Car. Bur. 2001) (rejecting claim by applicant that it should be excused because it relied upon a third-party that was late in filing).

¹² See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 at 17 (November 2001) (FCC Form 471 Instructions). We note that the Commission's rules direct libraries to calculate their discounts by determining poverty and high-cost status, and selecting the appropriate discount rate from the matrix. 47 C.F.R. § 54.505(b) and (c).

¹³ FCC Form 471 Instructions, 17 (stating libraries should contact schools for the discount amount or for data).

school district administration did not reply until several days after the application filing window had closed.¹⁴ We note that New Carlisle Olive could have requested the data from the school administration well before it did or alternatively use data it submitted in the previous funding year.¹⁵ We note that New Carlisle Olive had managed to gather data in the previous year for a timely submission of its FCC Form 471. Thus, New Carlisle Olive's assertion that it was delayed in gathering data because the school district delayed reporting these data does not provide sufficient justification for a waiver of the Commission's rules.

6. Similarly, we reject New Carlisle Olive's claim that any additional work burden distinguishes this applicant from other applicants to the program who have limited staff for such applications.¹⁶ The entire schools and libraries program is geared to assist needy schools and libraries. Allowing waivers to all with limited funds and staff with large workloads would effectively mean the program could have no filing deadlines.

7. Finally, New Carlisle Olive's argument that SLD took approximately 10 weeks to notify the library that it had missed the deadline is irrelevant to the waiver analysis. Therefore, we conclude that New Carlisle Olive has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by New Carlisle Olive, New Carlisle, Indiana, on April 12, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁴ Waiver Request. *See also* FCC Form 471, New Carlisle Olive Public Library, filed January 2002. (enclosing data from New Prairie United School Corporation dated January 23, 2002).

¹⁵ While the Commission's rules do not set out a time-frame for the school lunch data being used, schools are given guidance in the instructions for FCC Form 471 to use data from the October 1 prior to the filing of the form or the most current data. *See* 54.505(b)(2); *see also* FCC Form 471 Instructions, at 17. Schools gather that data regularly as it is the schools that rely on the free and reduced lunch program data to implement such programs. Libraries do not gather such data from students themselves, but are allowed to use past school district data. We note that if a school district has participated in the Universal Service program in the previous year, such data would be posted on the SLD website, <<http://www.sl.universalservice.org/funding/>>.

¹⁶ *See Request for Review by Winnebago Public School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-109845, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 6999 (Com. Car. Bur. 1999) ("To simply advert... to its limited resources and the needs of its students, does not distinguish its situation from other applications the SLD must process each funding year in accordance with its filing deadlines.")

